

DATE: October 8, 1997

CASE NO.: 97-ERA-35

In the Matter of:

Melvin G. Chaney,
Complainant,

v.

Mobile Technology, Inc.,
Respondent.

**RECOMMENDED DECISION AND ORDER APPROVING
SETTLEMENT AND DISMISSING COMPLAINT WITH PREJUDICE**

This matter arises under the employee protection provision of the Energy Reorganization Act of 1974 (the “Act” or “ERA”), 42 U.S.C. § 5851, and the regulations promulgated thereunder and contained at 29 C.F.R. Part 24. Complainant, Melvin G. Chaney, has appealed the determination of Christopher Lee, Acting Regional Administrator of the U.S. Department of Labor’s Occupational Safety and Health Administration, dated April 2, 1997, dismissing Complainant’s complaint against Mobile Technology, Inc., Respondent.

Procedural History

Pursuant to due notice, this matter was originally scheduled for hearing before the undersigned administrative law judge on June 4, 1997, at Long Beach, California. During a telephonic prehearing conference convened on May 23, 1997, both parties expressed an interest in having a settlement judge appointed for the purpose of attempting to effectuate a settlement in this case.

In an Order issued May 30, 1997, Chief Administrative Law Judge John M. Vittone appointed Administrative Law Judge Thomas Phalen as a settlement judge pursuant to 29 C.F.R. § 18.9(e). In an Order issued July 1, 1997, Judge Vittone extended the term of Judge Phalen’s appointment an additional ninety (90) days.

In a letter received via facsimile on August 4, 1997, counsel for Respondent informed this office and the office of Judge Phalen that the parties' had agreed to a resolution of the above-captioned matter. Counsel further indicated that the original executed settlement documents would be forwarded to this office for the undersigned's consideration.

The parties' "Settlement Agreement and Mutual General Release" (hereinafter, "Settlement Agreement") was filed in this office on August 14, 1997. The document appears to have been executed by Complainant and Respondent's President and Chief Executive Officer. Moreover, at the undersigned's request, the parties filed a "Joint Declaration Regarding Settlement" (hereinafter, "Joint Declaration") via Federal Express on October 7, 1997. This document appears to have been executed by Complainant and Respondent's counsel.

The Parties' Settlement Agreement

In pertinent part, the parties' Settlement Agreement provides as follows:

1. Complainant shall dismiss the above-captioned matter with prejudice, that such dismissal is subject to approval by the Office of Administrative Law Judges, and that the settlement agreement is null and void should the dismissal with prejudice not be approved;
2. Both parties agree to bear their own costs and attorneys' fees incurred in the above-captioned matter, and that neither party shall have any obligation to make a settlement or other payment to the other party; and
3. Both parties agree to release any and all claims which they could have asserted in the above-captioned matter.

(See Settlement Agreement, at 2-5).

The Parties' Joint Declaration

In addition to the Settlement Agreement, the parties' Joint Declaration provides in pertinent part:

1. Both parties renew their stated desire to have the above-captioned matter dismissed with prejudice.
2. Both parties represent and confirm that no monies have changed hands between them in connection with entering into the Settlement Agreement and/or requesting dismissal with prejudice of the above-captioned matter.

(See Joint Declaration, at 1)

Adequacy of Settlement

After review of the Settlement Agreement, as supplemented by the Declaration, I find that the settlement is fair, adequate and reasonable in light of the record. Moreover, I find that the Settlement Agreement is in the best interests of both parties. As such, I shall recommend that the same be approved.

RECOMMENDED ORDER

Based upon the foregoing, it is **HEREBY RECOMMENDED** that the parties' Settlement Agreement Mutual General Release, which is hereby incorporated by reference, be APPROVED and that the above-captioned complaint be DISMISSED WITH PREJUDICE.

Entered this ____ day of October, 1997, at Long Beach, California.

DANIEL L. STEWART
Administrative Law Judge